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No. 175 176

In the Supreme Court of the United States

October Term, 1935

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

E. C. PETERSON

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

L. T. PETERSON

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Eighth Circuit entered in the above-entitled cases on March 25, 1935.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 44) is reported in 28 B. T. A. 591. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit is reported in 76 F. (2d) 806.

JURISDICTION

The judgments of the Circuit Court of Appeals were rendered on March 25, 1935. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the definition of the term "reorganization" contained in clause (a) of Section 112 (i) (1) of the Revenue Act of 1928 should be limited to transactions which partake of the nature of mergers or consolidations.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix to the Government's petition for certiorari in *Helvering* v. *Minnesota Tea Co.*, filed simultaneously herewith.

STATEMENT

The facts, as stipulated before the Board of Tax Appeals, are substantially as follows (R. 23–44):

The respondents herein are individuals residing at Duluth, Minnesota. During the taxable year

1928 the entire issued capital stock, 1,517 shares, of the Minnesota Tea Company, a corporation, was held as follows (R. 24):

	Shares
E. C. Peterson	702
A. F. Peterson	113
L. T. Peterson	702

These shares were acquired by the respective stockholders more than two years prior to August 23, 1928. (R. 24.)

On August 23, 1928, the said Minnesota Tea Company transferred all of its assets to Grand Union Company, another corporation, and received in exchange therefor 18,000 shares of the common capital stock (represented by voting trust certificates) of said Grand Union Company, plus the sum of $426,842.52 in cash. No liabilities of Minnesota Tea Company were assumed by Grand Union Company. (R. 24.)

The transfer was effected in accordance with the option and resolutions marked Exhibits A to E, which appear in the record at pages 27 to 43, inclusive.

The basis to the Minnesota Tea Company of the assets so transferred to Grand Union Company, for computing gain or loss, was $254,646.62. Minnesota Tea Company, immediately upon the receipt of the said cash in the amount of $426,842.52, paid this cash to its said stockholders, in proportion to their stockholdings and at the time of said payment the said stockholders assumed, in proportion to their stockholdings, the liabilities of the said Min-

nesota Tea Company amounting to $106,471.73, and thereafter the stockholders duly discharged and paid said liabilities so assumed. (R. 25.)

The amounts of said payments to the respective stockholders, and the amounts of the liabilities respectively assumed, were as follows (R. 26):

Stockholders	Cash received	Liabilities assumed	Net receipts
E. C. Peterson	$197,505.93	$49,270.37	$148,235.56
A. F. Peterson	31,830.66	7,930.99	23,899.67
L. T. Peterson	197,505.93	49,270.37	148,235.56

The amount of the tax due from the respondents, two of the above-named stockholders of the Minnesota Tea Company, depends solely upon whether the transfer of the properties of the Minnesota Tea Company to the Grand Union Company was a reorganization within the meaning of the Revenue Act.

Before the Board these cases were consolidated with that of *Minnesota Tea Co.* v. *Commissioner*, and all of the cases were decided in one opinion. (R. 44.) The Board of Tax Appeals held that the transaction was not a reorganization. In separate opinions the Circuit Court of Appeals reversed both the *Minnesota Tea Co.* case (76 F. (2d) 797) and the *Peterson* cases (76 F. (2d) 806).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals and remanding these cases for further consideration of

the tax liability upon the basis that the transaction between the Minnesota Tea Company and the Grand Union Company was a reorganization within the meaning of the statute.

REASONS FOR GRANTING THE WRITS

These cases depend upon a question presented in the petition for certiorari in *Helvering* v. *Minnesota Tea Co.*, No. —, October Term, 1935, filed simultaneously herewith. This petition is filed in order that the Government's rights may be preserved pending the determination of the petition in that case. There is no separate question here involved, and if the petition in the *Minnesota Tea Co.* case should be granted it may suit the convenience of the Court to defer action upon this petition until final decision in that case.

Respectfully submitted.

STANLEY REED,
Solicitor General.

JUNE, 1935.

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